

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

In re)	
)	
Steven J Zullo and)	
Virginia Carver Zullo)	
)	Case No. 09-13497-SSM
Debtors.)	Chapter 13
_____)	
)	
Steven J Zullo and)	
Virginia Carver Zullo)	
)	
v.)	
)	Adv. Pro. No. _____
EMC Mortgage Corporation)	
)	
Serve: CT Corporation System, Reg. Agt.)	
4701 Cox Rd. Ste. 301)	
Glen Allen, VA 23060)	
)	
and)	
)	
CITIBANK, N.A., AS TRUSTEE)	
)	
Serve:)	
Eugene M. McQuade)	
Chief Executive Officer)	
Citibank, N.A.)	
399 Park Avenue)	
New York, New York 10043)	
_____)	

COMPLAINT TO DETERMINE SECURED STATUS
PURSUANT TO 11 U.S.C. § 506

NOW COME Steven J Zullo and Virginia Carver Zullo, Debtors in the above-captioned bankruptcy, by the undersigned counsel, and file this complaint to determine secured status pursuant to 11 U.S.C. § 506, and state as follows

1. The Debtors filed a petition for relief under Chapter 13 of Title 11 of the United States Bankruptcy Code on May 4, 2009.

2. Defendant EMC Mortgage Corporation is a Delaware Corporation authorized to do business in Virginia, and is the servicer of both the first and second deeds of trust on Plaintiffs' residence at 308 North Lee Street, Falls Church, VA 22046.

3. Defendant Citibank, N.A., is a federally chartered and insured lending and depository institution which, as Trustee, is the beneficiary of the second deed of trust on Plaintiff's residence.

Background

4. The Debtors and/or their bankruptcy estate own, as tenants by the entireties, a parcel of residential real estate located at 308 North Lee Street, Falls Church, VA 22046 (the Real Property"). The Real Property is the debtors' principal residence.

5. The Debtors are indebted to certain creditors holding deed of trust liens against the real property as follows:

Creditor	Date Lien was Established	Amount Owing
<u>Mortgage A:</u>	4/9/2007 (Book 4085 Pg. 1853)	\$810,202.97 (based on proof of claim)
<u>Mortgage B:</u>	4/9/2007 (Book 4085, Pg. 1876)	\$147,591.79 (based on proof of claim)

6. The first deed of trust having a recording date of April 9, 2007 ("Mortgage A") was given in connection with a note dated March 22, 2007, having an original principal balance in the amount of \$740,800, and was recorded at Deed Book 4085, Page 1853, among the land records of Arlington County.

7. The second deed of trust having a recording dated of April 9, 2007 ("Mortgage B") was given in connection with a note dated March 22, 2007, having a current balance in the

approximate amount of \$147,591.79, and was recorded at Deed Book 4085, Page 1876, among the land records of Arlington County.

8. The fair market value of the Real Property is \$702,500 or less. (See attached Exhibit A, valuing the Real Property at \$541,530). The tax assessment is \$702,500.00 (Exhibit B).

Determination of Secured Status

9. Bankruptcy Code § 506(a) provides that:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest...is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property...and is an unsecured claim to the extent that the value of such creditor's interest...is less than the amount of such allowed claim.

11 U.S.C. § 506(a).

10. Consistent with Bankruptcy Code § 506(a) and the decisions in *Dean v. LaPlaya Inv., Inc. (In re Dean)*, 319 B.R. 474 (Bankr. E.D. Va. 2004); *Pond v. Farm Specialist Realty (In re Pond)*, 252 F.3d 122, 126, 127 (2nd Cir. 2001); *In re McDonald*, 205 F.3d 606 (3rd Cir. 2000), *Johnson vs. Asset Management Group, LLC*, 226 B.R. 364 (D. Md. 1998), because Mortgage B is wholly unsecured relative to the Real Property, Defendants are not in any respect holders of a claim secured by the Debtor's residence and, as such, hold only an unsecured claim.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter an Order granting judgment in Plaintiffs' favor; (ii) finding that the Defendants' claim reflected by the Note and Deed of Trust recorded in the Land Records of Arlington County, Virginia, in Deed Book 4085, Page 1853 is wholly unsecured; and (iii) subject to completion of the

Plan in this case, directing that the lien be ordered avoided and stripped from the Real Property.

Dated: September 8, 2009.

Respectfully submitted,

/s/Daniel M. Press

Daniel M. Press, VSB# 37123
Russell B. Adams III, VSB# 37302
CHUNG & PRESS, P.C.
6718 Whittier Avenue, Suite 200
McLean, Virginia 22101
(703) 734-3800
Counsel for Plaintiffs

EXHIBIT A


[close window](#)

Homebuying, Loans, and Lines of Credit

The property value presented is an estimate based on public record data and other factors; the actual value of the property may vary. To find out how much you may qualify for based on the value of your home, contact a loan specialist today and they will help customize a loan to best fit your needs.

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Home Values

308 N Lee St, Falls Church, VA 22046

Search options

Home

308 N Lee St, Falls Church, VA 22046

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Estimate:

\$541,530

 Change over last 3 months: **-\$15,840**

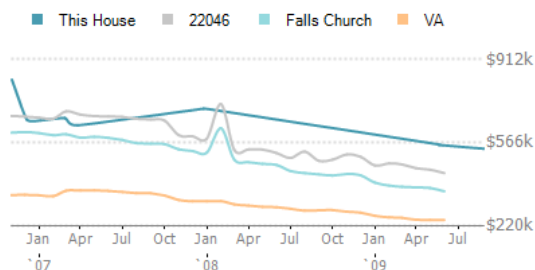
 Estimate Range: **\$487,377 – \$622,759**

 Last Update: **August 27, 2009**
[Fill out our free quick qualify quote form](#)

Estimated Home Value

[About...](#)

 Compared to: ☒ ZIP 22046 ☒ Falls Church ☒ VA

 Change over: **1 year** | **All**


Home Facts

Estimate Range	\$487,377 – \$622,759	
Bedrooms	4	
Bathrooms	2	
Living Area	2,333 Sq feet	
Lot Size	8,999 Sq feet	
Type	Single Family	
Parcel	51-125-046	
County	Falls Church City	
Year Built	2003	
Total Rooms	7	
Heating	Forced air unit	
Cooling	Central	
Number of Stories	—	
Legal Description	LOTS 5, 6, 21, & 22 BLOCK F WOODLAND	

Sales and Tax Info

Tax Year	Improvements + Land	Total
2008	\$345,000 + \$405,000 =	\$750,000
2007	\$345,000 + \$435,000 =	\$780,000
2006	\$242,700 + \$435,000 =	\$677,700
2002	\$75,200 + \$194,600 =	\$269,800

Neighborhood

Falls Church, VA 22046



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[Homes](#)

Choose a topic to view as heatmap:

 None

Comparable Homes

These are homes with characteristics similar to the home you are looking at that have been sold recently. They are important for understanding home market trends.

This Home	Estimate:	\$541,530
	Living Area:	2,333 sq. ft.
	Last Sale Date:	—
Comparables	Avg. Sales Price:	\$559,269
	Avg. Living Area:	1,781 sq. ft.

7215 Tod St

 Sold for: **\$580,000** on 3/10/2008
 4 br 2 ba Living Area: 2147 sq. ft.

2224 Glenheather Dr

 Sold for: **\$499,000** on 1/26/2009
 4 br 2 ba Living Area: 1926 sq. ft.

2224 Glenheather Dr

 Sold for: **\$499,000** on 1/26/2009
 4 br 2 ba Living Area: 1926 sq. ft.

6605 Fisher Ave

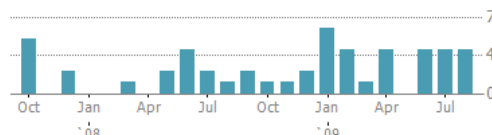
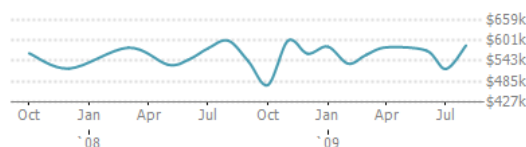
 Sold for: **\$599,000** on 10/26/2007
 4 br 2 ba Living Area: 1759 sq. ft.

[View all comparables](#)
[HGTV's FrontDoor.com](#)

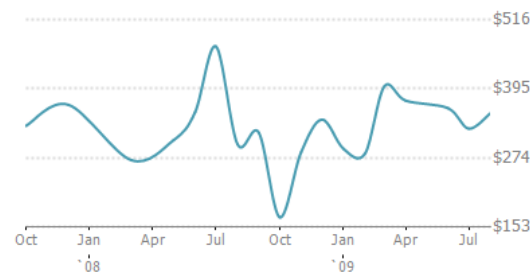
308 N Lee St, Falls Church, VA 22046 Compared to...

Comparable Homes ZIP 22046

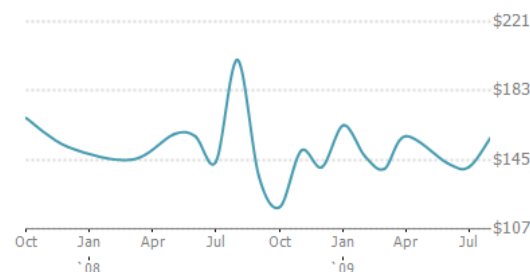
Median Market Price and Total Home Sales

[About...](#)Change over: **1 year** | [All](#)

Median Price by Living Area

[About...](#)Change over: **1 year** | [All](#)

Median Price per Bedroom

[About...](#)Change over: **1 year** | [All](#)

House values are affected by more than just the home itself. Many other factors play into the changing value of your home, including the crime rate of the neighborhood, the quality of the schools in the area, and the values of other homes. If you're trying to keep up with the housing market and the changes in the value of your home, use the "Find My Home" function and enter your address, 308 N Lee St, Falls Church, VA 22046, to find out what your home is worth and what may be affecting the house values in your neighborhood.

[Prev](#)[Back to search results](#)[Next](#)Video Courtesy of [FrontDoor.com](#), the Real

AP Real Estate News

New normal for home sales: Buyers have the power



- Craigslist and eBay become interior design muses
- Mixing old and new is a great design strategy
- Ahead of the Bell: Hotel REITs upgraded
- Question remains: What will rise at ground zero?
- Mortgage giants struggle a year after takeover
- Utah to offer \$8M in housing grants to aid economy

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- Customize a home loan to fit your needs
- Get a great rate and low monthly payment
- Prequalify in 10 minutes or less

Mortgage Refinance

- Lower your mortgage payment
- Keep a low rate for life of loan
- Consolidate high-interest debt

Home Equity Loans & Lines of Credit

- Get the funds you need
- Make home improvements or consolidate debt*
- Get up to .75% off your interest rate*

[Learn More](#)[Find my payment & rate](#)[Prequalify Now](#)[Learn More](#)[Find my payment & rate](#)[Prequalify Now](#)[Learn More](#)[Find my payment & rate](#)
[*Assumptions](#)[Apply Now](#)

Disclaimer: This property valuation is the product of automated valuation technology, public record data and human decisioning logic combined to provide a logical estimate of the possible selling price of a residential property. This valuation is not an appraisal. This valuation estimates property value assuming simple title ownership and the property condition as average for the neighborhood. Property valuations are not suitable for complex properties. This valuation contains no representations or warranties regarding marketability, functional or economic obsolescence, environmental contamination or flood insurance determination. This valuation does not warrant the accuracy of any public record information or data sources used to prepare this valuation.

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EXHIBIT B



Cathy Kaye
Treasurer, City of Falls Church
300 Park Avenue Suite 103E
Falls Church, VA 22046-3351

ZULLO STEVEN J & ZULLO CARVER
308 N LEE ST
FALLS CHURCH, VA 22046

THIS IS NOT A BILL
2009 REAL ESTATE TAX
FIRST INSTALLMENT – TAX YEAR 2009

2009 tax rate - \$1.07 per \$100 of value

Description	Assessment
308 N LEE ST LOTS 5, 6, 21, & 22 BLOCK F WOODLAND	RPC Number: 51-125-046 Tax Year: 2009 Building Value 297,500 Land Value 405,000 Total Value 702,500
Unpaid Taxes	Tax Information
Prior Year Tax & Penalty \$.00 Prior Year Interest \$.00	Mortgage Company EMC MORTGAGE CORPORATION Bill Number: 904546 Total Tax Due for Year: \$7,516.75 1 st Installment Due: 06/05/2009 \$3,758.38 2 nd Installment Due: 12/05/2009 \$3,758.37 Abatements and Adjustments \$.00 Payment Received to Date: \$.00 Late Payment Penalties: \$.00 Interest: \$.00

***** 1st Installment Due By 06/05/09 in the amount of \$3,758.38 *****

This bill represents an installment due on the property described above. City of Falls Church taxes on real estate are due and payable in two installments, on June 5 and December 5. Upon failure to pay any installment when due, a late payment penalty of 10 percent (\$10.00 minimum) will be added. Interest will accrue on tax and penalty at the rate of 10 percent a year.

Payment questions? Call (703) 248-5046
Assessment questions? Call (703) 248-5022
Monday –Friday 8:00 a.m. – 5:00 p.m.



Cathy Kaye
Treasurer, City of Falls Church
300 Park Avenue Suite 103E
Falls Church, VA 22046-3351

THIS IS NOT A BILL

FIRST INSTALLMENT
TAX YEAR 2009

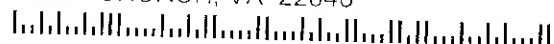
Bill Number 904546 for Parcel # 51-125-046 was sent to the following mortgage company: EMC MORTGAGE CORPORATION

If your mortgage company has changed or is not escrowing your taxes, please complete the following information and return this form in the enclosed envelope.

- ☐ Please bill me at the address printed below
☐ Please bill me at the address written right
☐ Please bill the mortgage company listed to the right

Your Name or Mortgage Company Name _____
Address _____
Phone _____ Loan# _____

ZULLO STEVEN J & ZULLO CARVER
308 N LEE ST
FALLS CHURCH, VA 22046



Treasurer, City of Falls Church
300 Park Ave. Suite 103E
Falls Church, VA 22046-3351